

PT 01-13

Tax Type: Property Tax

Issue: Education Ownership/Use

**STATE OF ILLINOIS
DEPARTMENT OF REVENUE
OFFICE OF ADMINISTRATIVE HEARINGS
CHICAGO, ILLINOIS**

**WEST ENGELWOOD
CHRISTIAN COMMUNITY
SCHOOL,
APPLICANT**

v.

**DEPARTMENT OF REVENUE
STATE OF ILLINOIS**

**Nos: 00-PT-0013
(98-16-1211)**

**Real Estate Exemption
for 1998 Tax Year**

P.I.N: 20-32-402-045

Cook County Parcel

**Alan I. Marcus
Administrative Law Judge**

RECOMMENDATION FOR DISPOSITION

APPEARANCES: Mr. Richard A. Jacobson of Ruff, Weidnaar & Reidy on behalf of the West Engelwood Christian Community School (hereinafter referred to as the “applicant”).

SYNOPSIS: This proceeding raises the following issues: first, whether applicant qualifies as a “school,” within the meaning of Section 15-35 of the Property Tax Code, 35 ILCS 200/1-1, *et seq* (hereinafter the “Code”); second, whether applicant held any ownership interest in real estate identified by Cook County Parcel Index Number 20-32-402-045 (hereinafter the “subject property”) during the 1998 assessment year; and third, whether applicant used the subject property “exclusively for school purposes,” as required by Section 15-35, during that assessment year.

The controversy arises as follows:

Applicant filed a Real Estate Tax Exemption Complaint with the Cook County Board of Review on July 1, 1999. (Dept. Ex. No. 1). The Board reviewed applicant's complaint and thereafter recommended to the Illinois Department Of Revenue (hereinafter the "Department") that the requested exemption be denied. (Dept. Ex. No. 2). On January 21, 2000, the Department issued a determination affirming the Board's recommendation on grounds of lack of exempt ownership and lack of exempt use. (Dept. Ex. No. 3). Applicant filed a timely appeal as to this denial and thereafter presented evidence at a formal administrative hearing. Following submission of all evidence and a careful review of the record, I recommend that the Department's denial be reversed.

FINDINGS OF FACT:

1. The Department's jurisdiction over this matter and its position therein are established by the admission into evidence of Dept. Ex. Nos. 1, 2 and 3.
2. The Department's position in this matter is that the subject property is not in exempt ownership and not in exempt use. Dept. Ex. No. 3.
3. Applicant is an Illinois not-for profit corporation organized for purposes of operating a private, Christian-based primary and secondary school for children. It has an average enrollment of approximately 35 to 40 students who are taught a State-approved curriculum that emphasizes reading, writing, arithmetic, religion and business-related skills. Applicant Ex. Nos. 1, 2, 13; Tr. pp. 14-15, 18-19.
4. Applicant's main school building, located at 7338 S. Racine, Chicago, IL, was exempted from real estate taxation pursuant to the Departmental determination in Docket No. 94-16-1262, issued by the Office of Local Government Services on

January 19, 1996. This exemption remained in full force and effect throughout the 1998 assessment year. Administrative Notice.

5. The subject property is located at 8300-8302 S. Carpenter, Chicago, IL and improved with a one-story storefront building that contains a small grocery store. Dept. Ex. No. 2; Applicant Ex. No. 13; Tr. pp.15-17, 27, 33, 35.
6. Applicant used this store as an instructional facility for its business skills curriculum throughout 1998.¹ Applicant provided this instruction by requiring the students work at the store under the supervision of one or more of applicant's teachers. Applicant Ex. No. 12; Tr. pp. 28, 33-35, 64, 71.
7. The students performed tasks that provided them with hands-on experience in business and employment-related skills, such as customer relations, sales and money management. They were not paid for their work but did receive on-site classroom instruction and a grade that was based on their job performance. Tr. pp. 33-34, 36, 64-65, 71.
8. Parents of school children and some of applicant's alumni also worked at the store, although they were not paid for their work. Nor was anyone else who worked at the store. Tr. pp. 41-42.

1 . All uses described in this and all subsequent Findings of Fact shall be understood to be 1998 uses unless context clearly specifies otherwise.

9. The store's financial structure was as follows:

CATEGORY	TOTAL AMOUNT²
Operating Revenues	\$36,300.00
Operating Expenses	\$33,000.00
Surplus Revenues	\$ 3,300.00

Applicant Ex. No. 11.

10. In general terms: (1) most of the store's operating revenues came from sales of beverages, candy and other related food items; (2) the remaining operating revenues came from sales of miscellaneous articles, such as Christian books, bibles and clothing; (3) the store did not derive any operating revenues from sales of lottery tickets or sales of alcoholic beverages, as those items were not sold at the store; (4) all of the store's operating expenses were attributable to expenditures on supplies, utilities and insurance; and, (5) all of the store's surplus operating revenues went into the general fund for its school. Applicant Ex. No. 11; Tr. p. 28, 37-38.

11. Applicant's president, the Rev. D. A. Crushshon, Sr. (hereinafter "Pastor Crushshon") entered into a contract for deed to purchase the subject property on November 4, 1995. Pastor Crushshon entered into this contract because applicant did not have sufficient assets to secure a bank loan that would enable it to purchase the subject property. Applicant Ex. No. 6; Tr. pp. 20-22.

2. The financial statements (Applicant Ex. No. 11) only show aggregate income and expense totals. They do not, however, contain any specifics about the constituent line items from which these totals were derived. Therefore, I am unable to arrive at any breakdown that accounts for such line items.

12. The contract for deed provides, *inter alia*, that: (1) the total purchase price for the subject property was to be \$90,000.00; (2) the purchaser was to pay \$33,500.00 (or approximately 1/3 of the purchase price) at closing and then make payments of \$500.00 per month from December 4, 1995 until November 5, 2005; and, (3) the purchaser was to pay any and all real estate taxes levied against the subject property. Applicant Ex. No. 6.
13. All of the financial obligations under the contract, including payment of the 1998 real estate taxes, were satisfied from funds drawn on applicant's corporate checking account.³ Each of these checks were countersigned by Pastor Crushshon and another one of applicant's corporate officers. Applicant Ex. Group Ex. Nos. 9, 10; Tr. pp. 22-27.

CONCLUSIONS OF LAW:

An examination of the record establishes that this applicant has demonstrated by the presentation of testimony or through exhibits or argument, evidence sufficient to warrant exempting the subject property from 1998 real estate taxes. Accordingly, under the reasoning given below, the determination by the Department that said property does not qualify for such exemption under 35 ILCS 200/15-35 should be reversed. In support thereof, I make the following conclusions:

Article IX, Section 6 of the Illinois Constitution of 1970 states as follows:

The General Assembly by law may exempt from taxation only the property of the State, units of local government and school districts and property used exclusively for agricultural and horticultural societies, and for school, religious, cemetery and charitable purposes.

3. The checks named the "West Englewood Christian Community School" and not Pastor Chrushshon or any other private individual, as maker of the checks. Applicant Group Ex. No. 9.

In furtherance of its Constitutional mandate, the General Assembly enacted Section 15-35 of the Property Tax Code (35 ILCS 200/1-1, 15-35), wherein the following are exempted from real estate taxation:

All property donated by the United States for school purposes, and all property of schools, not sold or leased or otherwise used with a view to profit ... [together with] ...
(b) property of schools on which the schools are located and any other property of schools used by the schools exclusively for school purposes...[.]

35 ILCS 200/15-35.

The statutory requirements for exemption under Section 15-35 are, simply stated, that the property: (1) must be owned by an entity that qualifies as a “school;”⁴ and, (2) must be “used exclusively”⁵ for school purposes. Chicago & Northeast Illinois District Council of Carpenters v. Illinois Department of Revenue, 293 Ill. App.3d 600 (1st Dist. 1997), *leave to appeal denied*, April 1, 1998; Coyne Electrical School v. Paschen, 12 Ill.2d 387 (1957); Northern Illinois University v. Sweet, 237 Ill. App.3d 28 (2nd Dist. 1992).

Here, the fact that applicant’s main facility, located at 7338 S. Racine, Chicago, IL, was tax exempt throughout 1998 establishes that applicant itself qualifies as a “school.” Thus, the subject property would be in exempt ownership if applicant itself was in title thereto during the tax year in question. Applicant was not, however the legal title holder during that tax year.

It is well established that technical refinements of title are not determinative of ownership for property tax purposes. People v. Chicago Title and Trust, 75 Ill.2d 479

4. For property tax purposes, a “school,” is a place where systematic instruction in useful branches is given by methods common to schools and institutions of learning, which would make the place a school in the common acceptation [sic] of the word. People ex rel. McCullough v. Deutsche Evangelisch Lutherisch Jehova Gemeinde Ungeanderter Augsburgischer Confession, 249 Ill. 132, 137 (1911).

5. The word “exclusively” when used in Section 200/15-35 and other property tax exemption statutes means the “the primary purpose for which property is used and not any secondary or incidental purpose.” Pontiac Lodge No. 294, A.F. and A.M. v. Department of Revenue, 243 Ill. App.3d 186 (4th Dist. 1993).

(1979); Chicago Patrolmen's Association v. Department of Revenue, 171 Ill.2d 263 (1996). Rather, the determinative indicia of ownership are the right to control the property and the right to enjoy its benefits. *Id.*

Our courts have also recognized that, in some circumstances, exemptions should not be destroyed if practical business realities prevent an otherwise exempt organization from obtaining title in its own name. Christian Action Ministry v. Department of Local Government Affairs, 74 Ill.2d 51 (1978).⁶ There, the appellee-Ministry obtained its interest in the property by means of a contract for warranty deed. The terms of this contract provided, *inter alia*, that: (1) the Ministry was to make a \$30,000.00 down payment and monthly payments of \$2,500.00 toward the purchase price;⁷ (2) the Ministry was to be liable for payment of any and all real estate taxes levied against the subject property; and, (3) no title, legal or equitable, was to pass to the Ministry until the deed was delivered or until the purchase price was paid in full. Christian Action Ministry, *supra*, at 54.

The court placed little if any significance on the last condition and specifically noted that:

Regardless of the status of title, [the Ministry] has a substantial monetary interest in the property and is liable for payment of real estate taxes. We cannot perceive any difference in kind between the conventional purchase money mortgage arrangement, which the Department concedes would qualify [the Ministry] for tax exempt status, and the contract for warranty deed which would justify disparate treatment for tax purposes. [Citations omitted].

6. See also, Cole Hospital v. Champaign County Board of Review, 113 Ill. App. 3d 96 (4th Dist. 1983) (Due to troubled financial history and unavailability of State revenue bonds, appellee employed conveyance and lease-back arrangement to obtain equitable title to property used for charitable purposes).

7. The actual purchase price was unspecified in the court's opinion. Christian Action Ministries, *supra*, at 54.

Had the Ministry arranged a mortgage loan for the property, it would have qualified for tax-exempt status. To penalize [an otherwise exempt entity] for failing to acquire the customary forms of financing, and hence, for making the alternative arrangement of a contract for sale of property in order to carry [out its otherwise exempt activities] runs counter to the stated policy objective and policy consideration of encouraging [such activities].

Christian Action Ministries, *supra*, at 61-62.

Here, applicant acquired a “substantial monetary interest” in the property by paying the entire \$33,500.00 down payment, together with every one of the \$500.00 monthly payments and all real estate taxes, out of its corporate checking account. Despite this, applicant could not afford to purchase the property by conventional means. Hence, business reality dictates that applicant needed some sort of surety to acquire any type of interest in the subject property.

Pastor Crushshon provided that surety through his signature on the contract for deed. That signature was, on its face, that of a private individual. However, Pastor Crushshon’s position as applicant’s president vested him with inherent authority to act on applicant’s behalf. Thus, for all the above-stated reasons, I conclude that Pastor Crushshon was acting as a guarantor for applicant when signing that contract. Therefore, that portion of the Department’s determination which found that the subject property was not in exempt ownership should be reversed.

The Department’s finding as to lack of exempt use should also be reversed. As noted above, it is the primary use of real estate, and not any incidental use or uses, that determines exempt status. Pontiac Lodge No. 294, A.F. and A.M. v. Department of Revenue, 243 Ill. App.3d 186 (4th Dist. 1993); Children's Development Center v. Olson, 52 Ill.2d 332 (1972) (hereinafter "Olson"). In the context of income-producing

properties, this means that “if the primary use is for the production of income, that is, ‘with a view to profit,’ the tax exempt status is destroyed.” Olson, *supra*, at 336. However, “if the primary use is not for the production of income but to serve a tax-exempt purpose the tax exempt status of the property continues though the use may involve the incidental production of income.” *Id.*

A cursory review of this record could lead one to conclude that the subject property was primarily used as a commercial grocery store throughout 1998. Such a view would support the Department’s determination that the subject property was not in exempt use. However, Pastor Crushshon’s testimony, which was supported by that of other individuals who either taught or received instruction at the subject property, clarified that said property was primarily used as an instructional facility for applicant’s business skills curriculum. Tr. pp. 28, 33-36, 64-65, 71. Hence, whatever commercial activity that took place at said property was but an incidental byproduct of those “school”-related uses.

It is well established that satellite facilities can qualify for exemption if applicant’s use thereof is “reasonably necessary” to facilitate another specifically identifiable exempt use. Evangelical Hospitals Corporation v. Department of Revenue, 233 Ill. App.3d 225 (2nd Dist. 1991). Here, applicant used the subject property to provide students with “hands on” training in business and employment-related skills that it could not provide at its tax-exempt school. (*See*, Applicant Ex. No. 12; Tr. pp. 28, 33-36). For this and all the above-stated reasons, I conclude that the subject property was in exempt use, as required by Section 15-35, during the 1998 tax year. Therefore, the Department’s initial determination to the contrary should be reversed.

WHEREFORE, for the reasons set forth above, I recommend that Cook County Parcel Index Number 20-32-402-045 be exempt from 1998 real estate taxes under Section 15-35 of the Property Tax Code.

March 7, 2001

Date

Alan I. Marcus
Administrative Law Judge